

AMENDED IN ASSEMBLY JUNE 21, 2005

AMENDED IN SENATE MAY 2, 2005

AMENDED IN SENATE APRIL 28, 2005

SENATE BILL

No. 399

Introduced by Senator Escutia

(Coauthors: Senators Alquist, Kehoe, Murray, Perata, and Romero)

February 17, 2005

An act to amend Section 23004.1 of the Government Code, and to ~~repeal and add~~ *amend* Section 14124.791 of, *and to add Section 14124.792 to*, the Welfare and Institutions Code, relating to health services.

LEGISLATIVE COUNSEL'S DIGEST

SB 399, as amended, Escutia. Health services: 3rd-party liability.

(1) Existing law prescribes procedures under which a provider, beneficiary, or the Director of Health Services may bring an action or claim against a 3rd party who is liable for services rendered to a beneficiary under the Medi-Cal program. Existing law provides that, subject to a prior right of recovery of the director, a provider who has rendered services to a beneficiary because of an injury for which a 3rd party is liable and who has received payment under the Medi-Cal program shall be entitled to file a lien for the services provided thereto against any judgment, award, or settlement obtained by the beneficiary or the director against that 3rd party if the provider has made a full reimbursement of any fees paid to the department for those services.

This bill would revise these 3rd-party claim procedures. The bill would revise the provider lien procedures to ~~instead authorize~~ *provide that the lien for the reasonable and necessary charges for services*

~~provided to the beneficiary shall be satisfied against the portion of any judgment, award, or settlement relating to past medical expenses in the action or claim brought~~ *obtained by the beneficiary or the director against a 3rd party. The bill would provide instead that the provider may recover only upon proof that the provider has made a full refund of all payments made by the Medi-Cal program to the provider for services rendered to a beneficiary under the Medi-Cal program. The bill would also establish procedures that would apply when there is a dispute between the provider and the beneficiary regarding the amount of a lien asserted.*

(2) Existing law provides procedures under which, in any case in which a 3rd person is liable to pay for health services provided by a county to an injured or diseased person, the county may recover from that 3rd person or be subrogated to any right or claim that the injured or diseased person, including identified parties in interest, have against that 3rd person. Under these procedures, the county's right of action abates during the pendency of an action brought for damages against the 3rd person by the injured or diseased person and continues as a first lien against any judgment recovered by the injured or diseased person.

This bill would provide that the county's right of action would continue under this provision as a first lien subordinate to a lien right of the Director of Health Services and, in addition, against any settlement, compromise, arbitration award, mediation settlement, or other recovery obtained by the injured or diseased person. The bill would also provide that a county enforcing a lien under these provisions, a physician or surgeon, or a public hospital as specified, is a provider for purposes of paragraph (1).

Vote: majority. Appropriation: no. Fiscal committee: no.
State-mandated local program: no.

The people of the State of California do enact as follows:

- 1 SECTION 1. Section 23004.1 of the Government Code is
- 2 amended to read:
- 3 23004.1. (a) Subject to Section 23004.3, in any case in which
- 4 the county is authorized or required by law to furnish hospital,
- 5 medical, surgical, or dental care and treatment, including
- 6 prostheses and medical appliances, to a person who is injured or
- 7 suffers a disease, under circumstances creating a tort liability

upon some third person to pay damages therefor, the county shall have a right to recover from that third person the reasonable value of the care and treatment so furnished or to be furnished, or shall, as to this right, be subrogated to any right or claim that the injured or diseased person, his *or her* guardian, personal representative, estate, or survivors has against ~~such~~ *that* third person to the extent of the reasonable value of the care and treatment so furnished or to be furnished.

(b) The county may, to enforce rights established under subdivision (a), institute and prosecute legal proceedings against the third person who is liable for the injury or disease in the appropriate court, either in its own name or in the name of the injured person, his *or her* guardian, personal representative, estate, or survivors. This action shall be commenced within the period prescribed in Section 340 of the Code of Civil Procedure. In the event that the injured person, his or her guardian, personal representative, estate, survivors, or any of them brings an action for damages against the third person who is liable for the injury or disease, the county's right of action shall abate during the pendency of that action, and continue as a first lien, subordinate to the Director of Health Services' lien rights pursuant to Section 14124.74 of the Welfare and Institutions Code, against any judgment, settlement, compromise, arbitration award, mediation settlement, or other recovery obtained by the injured or diseased person, his or her guardian, personal representative, estate, or survivors, against the third person who is liable for the injury or disease, to the extent of the reasonable value of the care and treatment so furnished or to be furnished. When the third person who is liable is insured, the county shall notify the third person's insurer, when known to the county, in writing of the lien within 30 days following the filing of the action by the injured or diseased person, his or her guardian, personal representative, estate, or survivors, against the third person who is liable for the injury or disease. However, the failure to so notify the insurer shall not prejudice the claim or cause of action of the injured or diseased person, his or her guardian, personal representative, estate, or survivors, or the county.

(c) *A county, in enforcing its lien rights under this section, is subject to subdivisions (d) and (e) of Section 14124.791 of, and Section 14124.792 of, the Welfare and Institutions Code.*

1 ~~SEC. 2. Section 14124.791 of the Welfare and Institutions~~
2 ~~Code is repealed.~~

3 ~~SEC. 3. Section 14124.791 is added to the Welfare and~~
4 ~~Institutions Code, to read:~~

5 ~~14124.791. (a) (1) The Legislature finds and declares all of~~
6 ~~the following:~~

7 ~~(A) Public hospitals face an overwhelming task in their efforts~~
8 ~~to provide access to health services and quality care to the~~
9 ~~indigent and uninsured in the communities they serve.~~
10 ~~Reductions in federal funding, the cost of care provided in~~
11 ~~emergency rooms, pressure from providers to increase~~
12 ~~reimbursement rates, pressure from the state and insurers to~~
13 ~~reduce costs, and increased regulation to improve patient safety~~
14 ~~and the quality of care, have put many public hospitals on the~~
15 ~~brink of closure.~~

16 ~~(B) Public hospitals are needlessly constrained in meeting the~~
17 ~~cost of operations by legal impediments to their ability to recover~~
18 ~~the reasonable costs of care provided from responsible parties.~~

19 ~~(C) It is necessary to allow public hospitals to exercise lien~~
20 ~~recovery rights relative to an individual that has received free~~
21 ~~care at a public hospital when that patient receives compensation~~
22 ~~for the cost of medical expenses resulting from acts of a third~~
23 ~~party.~~

24 ~~(D) Granting providers lien recovery rights increases a~~
25 ~~provider's incentive to participate in the Medi-Cal program,~~
26 ~~thereby improving a Medi-Cal beneficiary's access to care.~~

27 ~~(E) Granting providers lien recovery rights increases a~~
28 ~~provider's incentive to notify the State Department of Health~~
29 ~~Services of the existence of third-party liability.~~

30 ~~(F) Allowing providers to recover payment from responsible~~
31 ~~third-party tortfeasors, subject to the provider's full refund to the~~
32 ~~State Department of Health Services, furthers the goal of the~~
33 ~~Medi-Cal program to be the payer of last resort, results in savings~~
34 ~~to the state, and assists the state in carrying out its obligations to~~
35 ~~identify and recover funds from third parties that are responsible~~
36 ~~to pay for the care provided to Medi-Cal beneficiaries.~~

37 ~~(2) It is the intent of the Legislature in enacting the act that~~
38 ~~added this section to respond to the invitation of the California~~
39 ~~Supreme Court in *Olszewski v. Scripps Health* (2003) 30 Cal.4th~~
40 ~~798, to permit providers to recover their reasonable and~~

1 necessary charges while protecting Medi-Cal beneficiaries' rights
2 to recover full damages from responsible third-party tortfeasors,
3 and to preclude tortfeasors from receiving the benefit of the
4 Medi-Cal program at the expense of providers, beneficiaries, and
5 taxpayers.

6 (b) Subject to the director's prior right of recovery, a provider
7 who has rendered services to a beneficiary because of an injury
8 for which a third party is or may be liable and who has received
9 payment under the Medi-Cal program shall be entitled to a lien
10 for the reasonable and necessary charges for services provided to
11 the beneficiary against the portion of any judgment, award, or
12 settlement relating to past medical expenses obtained by the
13 beneficiary or the director against that third party. A provider
14 may recover upon the lien only upon proof that the provider has
15 made a full refund of all payments made by the Medi-Cal
16 program to the provider for these services. Proof of refund of all
17 payments made to the department shall be in the form of a copy
18 of the check to the department and appropriate representation that
19 the check was mailed to the department.

20 (c) If either the beneficiary or the director brings an action or
21 claim against the third party, the party bringing the action shall,
22 within 30 days of bringing the action, give written notice to any
23 provider who is eligible to file a lien under subdivision (b) of, to
24 the extent known, the name and address of each third party and
25 the name and address of each insurance carrier that has insured
26 the third party against the liability and, to the extent applicable,
27 the name of the action and court or state or local agency in which
28 the action or claim is brought. Notice shall be given by personal
29 service or registered mail, and proof of service shall be filed in
30 the action or claim.

31 (d) (1) The lien shall become perfected when the provider
32 sends a written notice containing the name and address of the
33 injured person, the name and location of the provider, and the
34 amount claimed as reasonable and necessary charges, to the
35 beneficiary's attorney, if known, and if not known, to the
36 beneficiary or the beneficiary's legal representative and to the
37 director.

38 (2) If notice is given to the beneficiary and the provider
39 subsequently has notice that the beneficiary has legal
40 representation, the provider shall give written notice to the

1 beneficiary's attorney. The failure to give notice to the
2 beneficiary's attorney pursuant to this paragraph shall not
3 invalidate the lien.

4 (3) The written notice required by this subdivision shall be
5 sent by registered mail.

6 (4) The amount claimed in the notice, or so much of that
7 amount as can be satisfied from any final judgment, compromise,
8 or settlement agreement after paying any other medical provider
9 lien, the priority for which is statutorily required, shall be
10 deemed to be included within any judgment, award, or settlement
11 unless the judgment, award, or settlement expressly allocates a
12 lesser amount. Any recovery on the lien shall be limited to that
13 portion of the judgment, award, or settlement constituting
14 compensation for past medical expenses.

15 (e) Where a provider is entitled to file a lien under this section,
16 the third party may not use the amount paid by Medi-Cal to
17 reduce the amount of its liability.

18 (f) If the beneficiary has filed a third-party action or claim, the
19 court where the action or claim was filed shall have jurisdiction
20 over a dispute between the provider and the beneficiary regarding
21 the amount of a lien asserted pursuant to this section that is based
22 upon an allocation of damages contained in a settlement or
23 compromise of the third-party action or claim. If no third-party
24 action or claim has been filed, any superior court in California
25 where venue would have been proper had a claim or action been
26 filed shall have jurisdiction over the motion. The motion may be
27 filed as a special motion and treated as an ordinary law and
28 motion proceeding and subject to regular motion fees. The
29 reimbursement determination motion shall be treated as a special
30 proceeding of a civil nature pursuant to Part 3 (commencing with
31 Section 1063) of the Code of Civil Procedure. When no action is
32 pending, the person making the motion shall be required to pay a
33 first appearance fee. When an action is pending, the person
34 making the motion shall pay a regular law and motion fee.

35 (g) In any motion filed pursuant to subdivision (f), all of the
36 following shall apply:

37 (1) The provider asserting a lien pursuant to this section and
38 the beneficiary shall be made a party to the motion, and either the
39 beneficiary or the provider may file the motion. In cases where
40 the third-party claim was tried to a verdict or judgment, the

1 motion shall be heard by the trial judge, if available. In cases
2 where an action has been filed and settled or otherwise resolved
3 prior to verdict or judgment, the motion shall be heard by the
4 judge to whom the matter was assigned, or, if no judge was
5 assigned or the assigned judge is unavailable, in the regular law
6 and motion department or by a judge assigned to hear the matter.
7 When no action has previously been filed, the motion shall be
8 assigned and heard pursuant to the regular law and motion
9 procedures in the court where the motion is filed.

10 (2) Within 14 days of a request from a provider, the
11 beneficiary shall serve a true and correct copy of those portions
12 of the settlement document upon which the asserted allocation is
13 based that are relevant to the determination motion. If not
14 requested by a provider, a true and correct copy of those portions
15 of the settlement document on which the asserted allocation is
16 based that are relevant to the determination motion shall be
17 served with the motion.

18 (3) (A) If the beneficiary is the moving party, notice of the
19 motion shall be addressed to any counsel representing the
20 provider on the lien, if known, and if not known, to the provider
21 at the provider's address as shown on the notice of lien. If the
22 provider is the moving party, notice of the motion shall be
23 addressed to the beneficiary's counsel, if known. If the
24 beneficiary is not represented by counsel, the notice of motion
25 shall be mailed to the beneficiary by registered mail. Proof of
26 service in compliance with this subdivision shall be filed with the
27 court.

28 (B) Notice required under this paragraph shall be given
29 pursuant to subdivision (b) of Section 1005 of the Code of Civil
30 Procedure.

31 (4) If the beneficiary is represented by counsel, the beneficiary
32 shall bear the burden of proof as to the fairness of the allocation
33 and the burden of producing evidence, by declaration or other
34 written form, as to the manner in which the allocation was made
35 and the evidentiary basis for the allocation. If the beneficiary is
36 not represented by counsel, the party making the motion shall
37 bear the burden of proof as to the fairness of the allocation and
38 the burden of producing evidence, by declaration or other written
39 form, as to the manner in which the allocation was made and the
40 evidentiary basis for the allocation.

1 ~~(5) In determining the fairness of the allocation, the court shall~~
2 ~~consider the relationship of damages for past medical expenses to~~
3 ~~the total damages claimed and the total amount of the settlement.~~

4 ~~(6) The court shall issue its findings, decision, and order,~~
5 ~~which shall be considered the final determination of the parties'~~
6 ~~rights and obligations with respect to the provider's lien, unless~~
7 ~~the settlement is contingent on an acceptable allocation of the~~
8 ~~settlement proceeds, in which case, the court's findings, decision,~~
9 ~~and order shall be considered a tentative determination. If the~~
10 ~~beneficiary does not serve notice of a rejection of the tentative~~
11 ~~determination, which shall be based solely upon a rejection of the~~
12 ~~contingent settlement, within 30 days of the notice of entry of the~~
13 ~~court's tentative determination, subject to further consideration~~
14 ~~by the court pursuant to paragraph (7), the tentative~~
15 ~~determination shall become final.~~

16 ~~(7) If the beneficiary does not accept the tentative~~
17 ~~determination, which shall be based solely upon a rejection of the~~
18 ~~contingent settlement, any party may subsequently seek further~~
19 ~~consideration of the court's findings upon application to modify~~
20 ~~the prior findings, decision, or order, based on new or different~~
21 ~~facts or circumstances. The application shall include an affidavit~~
22 ~~showing what application was made before, when, and to what~~
23 ~~judge, what order or decision was made, and what new or~~
24 ~~different facts or circumstances, including a different settlement,~~
25 ~~are claimed to exist. Upon further consideration, the court may~~
26 ~~modify the allocation in the interest of fairness and for good~~
27 ~~cause.~~

28 ~~(h) No claim authorized by this section shall be permitted to~~
29 ~~the extent that the claim would reduce the director's right to~~
30 ~~recover pursuant to Section 14124.78. However, the~~
31 ~~department's receipt of the provider's refund pursuant to~~
32 ~~subdivision (b) shall extinguish the director's claim for the same~~
33 ~~services. Section 1008 of the Code of Civil Procedure does not~~
34 ~~apply to any motion filed pursuant to subdivision (f).~~

35 ~~(i) Any person, firm, or corporation, including, but not limited~~
36 ~~to, an insurance carrier, who receives notice of a lien asserted~~
37 ~~pursuant to this section and who makes any payment to the~~
38 ~~injured person, or to his or her attorney, heirs, or legal~~
39 ~~representative, for the injuries the beneficiary sustained, after~~
40 ~~receipt of this notice, without paying to the provider the amount~~

1 the provider is entitled to receive as payment on its lien, shall be
2 liable to the provider for that amount.

3 (j) For purposes of this section, “reasonable and necessary
4 charges” means the usual, customary, and reasonable charges for
5 medical services in the geographic region where the services
6 were provided, when these services were medically necessary to
7 treat the injuries allegedly caused by a third-party tortfeasor. The
8 beneficiary has the burden of proof in a third-party action or
9 claim to establish the reasonable value of medical and hospital
10 expenses, reasonably required and actually provided for the
11 treatment of the beneficiary as the result of a third-party’s
12 conduct.

13 (k) The amount paid to the provider by Medi-Cal shall not be
14 considered in the determination of the amount of a provider’s
15 lien or in the determination of the amount of the third-party
16 tortfeasor’s liability to the beneficiary. This provision overturns
17 *Hanif v. Housing Authority* (1988) 200 Cal.App.3d 635, to the
18 extent that case is inconsistent with this provision. This provision
19 is declarative of existing law as stated in *Helfend v. Southern Cal*
20 *Rapid Transit Dist.* (1970) 2 Cal.3d 1.

21 (l) When a final judgment in the third-party claim includes a
22 special finding by a judge, jury, or arbitrator that the beneficiary
23 was partially at fault, the provider’s lien shall be reduced by the
24 same comparative fault percentage by which the beneficiary’s
25 recovery for past medical expenses was reduced.

26 (m) At the request of the beneficiary, the court or arbitrator in
27 the third-party action or claim shall provide for special findings
28 with respect to compensation allocated to past medical expenses.

29 (n) The provider’s lien shall be reduced by the pro rata amount
30 commensurate with the beneficiary’s reasonable attorney’s fees
31 and costs in accordance with the common fund doctrine. The
32 amount of the reduction in the provider’s lien pursuant to this
33 subdivision shall accrue solely to the benefit of the beneficiary
34 and shall not constitute additional attorney’s fees and costs owed
35 or payable to the beneficiary’s attorney.

36 (o) If any provision of this section, or the application of any
37 provision of this section to any person, firm, corporation, or other
38 entity or to any circumstance or situation, shall be held invalid,
39 the remaining provisions of this section shall not be affected
40 thereby, and shall be given effect.

~~(p) Subdivision (c) shall have no effect on the rights of parties or public agencies under Section 985 of the Government Code.~~

~~(q) As used in this section “provider” means all of the following:~~

~~(1) A county enforcing a lien pursuant to Section 23004.1 of the Government Code.~~

~~(2) A physician or surgeon required to be licensed under Section 2050 of the Business and Professions Code.~~

~~(3) Any public hospital, including those operated under the auspices of a county or other local government.~~

SEC. 2. Section 14124.791 of the Welfare and Institutions Code is amended to read:

14124.791. (a) The Legislature finds and declares all of the following:

(1) Granting providers lien recovery rights increases a provider’s incentive to participate in the Medi-Cal program, thereby improving a Medi-Cal beneficiary’s access to care.

(2) Granting providers lien recovery rights increases a provider’s incentive to notify the State Department of Health Services of the existence of third-party liability.

(3) Allowing providers to recover payment from responsible third-party tortfeasors, subject to the provider’s full refund to the State Department of Health Services, furthers the goals of the Medi-Cal program to be the payer of last resort, results in savings to the state, and assists the state in carrying out its obligations to identify and recover funds from third parties that are responsible to pay for the care provided to Medi-Cal beneficiaries.

(4) Public hospitals face an overwhelming task in their efforts to provide access to health services and quality care to the indigent and uninsured in the communities they serve. Reductions in federal funding, the cost of care provided in emergency rooms, pressure from providers to increase reimbursement rates, pressure from the state and insurers to reduce costs, and increased regulation to improve patient safety and the quality of care, have put many public hospitals on the brink of closure.

(5) Public hospitals are needlessly constrained in meeting the cost of operations by legal impediments to their ability to recover the reasonable costs of care provided from responsible parties.

(6) *It is necessary to allow public hospitals to exercise lien recovery rights relative to an individual that has received free care at a public hospital when that patient receives compensation for the cost of medical expenses resulting from acts of a third party.*

(b) Subject to the director's prior right of recovery, a provider who has rendered services to a beneficiary because of an injury for which a third party is liable and who has received payment under the Medi-Cal program shall be entitled to file a lien for all fees for services provided to the beneficiary against any judgment, award, or settlement obtained by the beneficiary or the director against that third party. *The lien shall be satisfied against the portion of any judgment, award, or settlement relating to past medical expenses obtained by the beneficiary or the director against any third party.* A provider may only recover upon the lien—*if upon proof that the provider has made a full reimbursement refund of any fees paid by the department all payments made by the Medi-Cal program to the provider for those services. Proof of making the refund to the department shall be in the form of a copy of the check to the department and appropriate representation that the check was mailed to the department.*

~~(b)~~
(c) If either the beneficiary or the director brings an action or claim against the third party, the party bringing the action shall, within 30 days of bringing the action, give written notice to any provider who is eligible to file a lien under subdivision ~~(a)~~ (b) of the action and of the name of the court or state or local agency in which the action or claim is brought. Notice shall be given by personal service or registered mail, and proof of service shall be filed in the action or claim.

~~(e) The provider's claim for reimbursement for fees for services rendered to the beneficiary shall be limited to the amount of the fees less 25 percent, which represents the provider's reasonable share of attorneys' fees for prosecution of the action and of the cost of litigation expense.~~

~~(d) No claim authorized by this section shall be permitted to the extent that the claim would reduce the director's right to recover pursuant to Section 14124.78.~~

1 (d) (1) The lien shall become perfected when the provider
2 sends a written notice containing the name and address of the
3 injured person, the name and location of the provider, and the
4 amount claimed the amount of all fees for services provided, to
5 the beneficiary's attorney, if known, and if not known, to the
6 beneficiary or the beneficiary's legal representative and to the
7 director.

8 (2) If notice is given to the beneficiary and the provider
9 subsequently has notice that the beneficiary has legal
10 representation, the provider shall also give written notice to the
11 beneficiary's attorney. The failure to give notice to the
12 beneficiary's attorney pursuant to this paragraph shall not
13 invalidate the lien.

14 (3) The written notice required by this subdivision shall be
15 sent by registered mail.

16 (4) The amount claimed in the notice, or so much of that
17 amount as can be satisfied from any final judgment, compromise,
18 or settlement agreement after paying any other medical provider
19 lien, the priority for which is statutorily required, shall be
20 deemed to be included within any judgment, award, or settlement
21 unless the judgment, award, or settlement expressly allocates a
22 lesser amount. Any recovery on the lien shall be limited to that
23 portion of the judgment, award, or settlement constituting
24 compensation for past medical expenses.

25 (e) Where a provider is entitled to file a lien under this
26 section, the third party may not use the amount paid by Medi-Cal
27 to reduce the amount of its liability. This subdivision shall have
28 no effect on the rights of parties under Section 3333.1 of the Civil
29 Code or public agencies under Section 985 of the Government
30 Code.

31 SEC. 3. Section 14124.792 is added to the Welfare and
32 Institutions Code, to read:

33 14124.792. (a) If the beneficiary has filed a third-party
34 action or claim, the court where the action or claim was filed
35 shall have jurisdiction over a dispute between the provider and
36 the beneficiary regarding the amount of a lien asserted pursuant
37 to this section that is based upon an allocation of damages
38 contained in a settlement or compromise of the third-party action
39 or claim. If no third-party action or claim has been filed, any
40 superior court in California where venue would have been

proper had a claim or action been filed shall have jurisdiction over the motion. The motion may be filed as a special motion and treated as an ordinary law and motion proceeding and subject to regular motion fees. The reimbursement determination motion shall be treated as a special proceeding of a civil nature pursuant to Part 3 (commencing with Section 1063) of the Code of Civil Procedure. When no action is pending, the person making the motion shall be required to pay a first appearance fee. When an action is pending, the person making the motion shall pay a regular law and motion fee.

(b) In any motion filed pursuant to subdivision (a), all of the following shall apply:

(1) The provider asserting a lien pursuant to Section 14124.791 and the beneficiary shall be made a party to the motion, and either the beneficiary or the provider may file the motion. In cases where the third-party claim was tried to a verdict or judgment, the motion shall be heard by the trial judge, if available. In cases where an action has been filed and settled or otherwise resolved prior to verdict or judgment, the motion shall be heard by the judge to whom the matter was assigned, or, if no judge was assigned or the assigned judge is unavailable, in the regular law and motion department or by a judge assigned to hear the matter. When no action has previously been filed, the motion shall be assigned and heard pursuant to the regular law and motion procedures in the court where the motion is filed.

(2) Within 14 days of a request from a provider, the beneficiary shall serve a true and correct copy of those portions of the settlement document upon which the asserted allocation is based that are relevant to the determination motion. If not requested by a provider, a true and correct copy of those portions of the settlement document on which the asserted allocation is based that are relevant to the determination motion shall be served with the motion.

(3) (A) If the beneficiary is the moving party, notice of the motion shall be addressed to any counsel representing the provider on the lien, if known, and if not known, to the provider at the provider's address as shown on the notice of lien. If the provider is the moving party, notice of the motion shall be addressed to the beneficiary's counsel, if known. If the beneficiary is not represented by counsel, the notice of motion

1 shall be mailed to the beneficiary by registered mail. Proof of
2 service in compliance with this subdivision shall be filed with the
3 court. Notice shall also be given to counsel for the third party, or
4 to the third party if not represented by counsel, in the underlying
5 action.

6 (B) Notice required under this paragraph shall be given
7 pursuant to subdivision (b) of Section 1005 of the Code of Civil
8 Procedure.

9 (4) If the beneficiary is represented by counsel, the beneficiary
10 shall bear the burden of proof as to the fairness of the allocation
11 and the burden of producing evidence, by declaration or other
12 written form, as to the manner in which the allocation was made
13 and the evidentiary basis for the allocation. If the beneficiary is
14 not represented by counsel, the party making the motion shall
15 bear the burden of proof as to the fairness of the allocation and
16 the burden of producing evidence, by declaration or other
17 written form, as to the manner in which the allocation was made
18 and the evidentiary basis for the allocation.

19 (5) In determining the fairness of the allocation, the court
20 shall consider the relationship of damages for past medical
21 expenses to the total damages claimed and the total amount of
22 the settlement.

23 (6) The court shall issue its findings, decision, and order,
24 which shall be considered the final determination of the parties'
25 rights and obligations with respect to the provider's lien, unless
26 the settlement is contingent on an acceptable allocation of the
27 settlement proceeds, in which case, the court's findings, decision,
28 and order shall be considered a tentative determination. If the
29 beneficiary does not serve notice of a rejection of the tentative
30 determination, which shall be based solely upon a rejection of
31 the contingent settlement, within 30 days of the notice of entry of
32 the court's tentative determination, subject to further
33 consideration by the court pursuant to paragraph (7), the
34 tentative determination shall become final.

35 (7) If the beneficiary does not accept the tentative
36 determination, which shall be based solely upon a rejection of
37 the contingent settlement, any party may subsequently seek
38 further consideration of the court's findings upon application to
39 modify the prior findings, decision, or order, based on new or
40 different facts or circumstances. The application shall include an

1 affidavit showing what application was made before, when, and
2 to what judge, what order or decision was made, and what new
3 or different facts or circumstances, including a different
4 settlement, are claimed to exist. Upon further consideration, the
5 court may modify the allocation in the interest of fairness and for
6 good cause.

7 (c) Any person, firm, or corporation, including, but not limited
8 to, an insurance carrier, who receives notice of a lien asserted
9 pursuant to this section and who makes any payment to the
10 injured person, or to his or her attorney, heirs, or legal
11 representative, for the injuries the beneficiary sustained, after
12 receipt of this notice, without paying to the provider the amount
13 the provider is entitled to receive as payment on its lien, shall be
14 liable to the provider for that amount.

15 (d) The amount paid to the provider by Medi-Cal shall not be
16 considered in the determination of the amount of a provider's
17 lien or in the determination of the amount of the third-party
18 tortfeasor's liability to the beneficiary. This provision overturns
19 *Hanif v. Housing Authority* (1988) 200 Cal.App.3d 635, to the
20 extent that case is inconsistent with this provision. This provision
21 is declarative of existing law as stated in *Helfend v. Southern Cal*
22 *Rapid Transit Dist.* (1970) 2 Cal.3d 1.

23 (e) When a final judgment in the third-party claim includes a
24 special finding by a judge, jury, or arbitrator that the beneficiary
25 was partially at fault, the provider's lien shall be reduced by the
26 same comparative fault percentage by which the beneficiary's
27 recovery for past medical expenses was reduced.

28 (f) At the request of the beneficiary, the court or arbitrator in
29 the third-party action or claim shall provide for special findings
30 with respect to compensation allocated to past medical expenses.

31 (g) The provider's lien shall be reduced by the pro rata
32 amount commensurate with the beneficiary's reasonable
33 attorney's fees and costs in accordance with the common fund
34 doctrine. The amount of the reduction in the provider's lien
35 pursuant to this subdivision shall accrue solely to the benefit of
36 the beneficiary and shall not constitute additional attorney's fees
37 and costs owed or payable to the beneficiary's attorney.

38 (h) If any provision of this section, or the application of any
39 provision of this section to any person, firm, corporation, or
40 other entity or to any circumstance or situation, shall be held

1 *invalid, the remaining provisions of this section shall not be*
2 *affected thereby, and shall be given effect.*

3 *(i) No claim authorized by this section shall be permitted to*
4 *the extent that the claim would reduce the director's right to*
5 *recover pursuant to Section 14124.78. However, the*
6 *department's receipt of the provider's refund pursuant to*
7 *subdivision (b) of Section 14124.791 shall extinguish the*
8 *director's claims for the same services. Section 1008 of the Code*
9 *of Civil Procedure does not apply to any motion filed pursuant to*
10 *subdivision (a).*

11 *(j) As used in this section, "provider" means any of the*
12 *following:*

13 *(1) A county enforcing a lien pursuant to Section 23004.1 of*
14 *the Government Code.*

15 *(2) A physician or surgeon required to be licensed under*
16 *Section 2050 of the Business and Professions Code.*

17 *(3) A hospital that meets the requirements for placement on*
18 *the disproportionate share list pursuant to subdivision (e) of*
19 *Section 14105.98.*

20 *(4) Any public hospital, including a hospital operated under*
21 *the auspices of a county or other local government.*